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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 446

THE E. INGRAHAM COMPANY, *Petitioner*

v.

BOARD OF TAX REVIEW OF THE TOWN AND CITY OF BRISTOL, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

Petitioner prays that a writ of certiorari issue to review the decision of the Supreme Court of Errors of the State of Connecticut entered in the above entitled case on April 28, 1959, which became final against the petitioner when its motion for reargument was denied on June 3, 1959.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of Errors of the State of Connecticut is reported in 146 Connecticut 403, 151 A. 2d 700, and is printed in Appendix B hereto *infra*, page 4a.

JURISDICTION

This case was presented to the Supreme Court of Errors of the State of Connecticut upon a stipulation of facts and upon questions stipulated by the parties and reserved to that Court, in accordance with state practice, for consideration and advice with the approval of the trial court, the Court of Common Pleas in and for Hartford County. The decision of the Supreme Court of Errors adverse to the petitioner upon such reservation was entered on April 28, 1959 (R. following page 14; Appendix B, *infra*, p. 4a). Petitioner's motion for reargument was denied on June 3, 1959 (Supplemental Record). Petitioner's application to this Court for an extension of time within which to appeal or file petition for a writ of certiorari was filed on September 1, 1959, and was granted, the time for filing petition for a writ of certiorari being extended to and including October 1, 1959 by order of this Court dated September 2, 1959 (Mr. Justice Brennan).

The federal question with respect to denial to petitioner of due process of law under the Fourteenth Amendment was argued in the briefs and orally to the Supreme Court of Errors and is necessarily involved in and is presented by the opinion of that Court denying petitioner any relief under Section 1801 of the General Statutes of Connecticut, hereinafter discussed. The constitutionality of Public Act No. 673 of 1957, under both the federal and state constitutions, hereinafter discussed, was expressly reserved for decision of the Supreme Court of Errors in the questions reserved for decision by the parties (Questions 2 through 5, R. 11).

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257 (3).

QUESTION PRESENTED

Is due process of law denied to a taxpayer by a decision of a State Court which is founded on an admittedly illegal method or formula of tax assessment and which disallows any adjustment of the assessment or recovery of the illegal tax imposed by invoking another State law and placing such a construction thereon as to completely and effectively deny any and all remedy for the enforcement of the taxpayer's right either to obtain any adjustment of the assessment or to recover the illegal tax imposed?

STATUTES INVOLVED

The statutory provisions involved are the General Statutes of Connecticut, Revision of 1949, Sections 1800 and 1801 (Revision of 1958, Sections 12-118 and 12-119), which are printed in Appendix A, *infra*, pp. 1a-2a, and Public Act No. 673 of the General Assembly of the State of Connecticut, 1957, Appendix A; *infra*, p. 3a.

STATEMENT

Petitioner, a corporation, engaged in manufacturing in the Town and City of Bristol, Connecticut, and owners of both real and personal property situated therein, filed a civil action in the Court of Common Pleas for Hartford County, Connecticut, seeking, among other things, a reduction of the assessment of its personal property on the tax list of October 1, 1955, to its lawful value, for a judgment for reimbursement of taxes overpaid and for other relief (R. 1-4). By

stipulation of the parties the Court of Common Pleas reserved the questions raised by said action for the consideration and advice of the Supreme Court of Errors of the State of Connecticut (R. 6-11).

The facts before the Supreme Court of Errors are contained in the aforementioned stipulation (R. 6-11), and essentially are as follows:

In 1953, the assessors of the respondent, the Town and City of Bristol, pursuant to statute (Section 1737 of the General Statutes of Connecticut, Revision of 1949) revalued all property in the Town for the purpose of assessment. The assessors employed certain formulas and methods agreed upon by them to determine the taxable value of all taxable property in the Town, both real and personal, including the property of petitioner. After determining the fair market value of all property by these formulas and methods, the assessors set all motor vehicles, including those of petitioner, on the Grand List of October 1, 1955, at 100% of their fair market values; they set all other personal property, including that of petitioner, on the Grand List at 80% of its fair market value; and they set all real property, including that of petitioner, at 50% of its fair market value.

In 1954, and 1955; the year involved in this case, the assessors used the same formulas and methods in arriving at the fair market values of taxable property as were used in 1953. After arriving at these fair market values, motor vehicles were placed on the Grand List at 100% of such value, other personal property at 90% of such value (10% higher than in 1953) and real estate at 50% of such value.

Petitioner, within the time and in the manner provided by law, appealed to the Board of Tax Review, claiming that the assessors erred in setting its motor vehicles, personal property and real property on the Grand List at differing percentages of fair market value in clear violation of existing state law but the Board made no changes.

The foregoing actions by the assessors and the Board, using the aforementioned differing percentages of valuation for motor vehicles, other personal property and real property, caused the property of petitioner to be placed on the Grand List of October 1, 1955 at a total assessed valuation of $5,767,300, which amount represented 4.739% of the assessed value, before exemptions, of all the taxable real and personal property in the Town, and 4.914% after exemptions. The true and actual fair market value of all of the said property of the petitioner as of that date was $7,529,750, which represented 3.633% of the true and actual value of all taxable property in the Town (R. 8, 9).

The same mill rate was applied by respondent to the assessment of both real and personal property on the tax list, or Grand List.

An appeal was taken by petitioner from the 1954 Grand List, using 1954 figures and based substantially on the same facts above stated, pursuant to the provisions of Sec. 1800 of the General Statutes of Connecticut (Appendix A, p. 1a). Petitioner went forward on that appeal on a Reservation to the Supreme Court of Errors of Connecticut. The decision of the Supreme Court of Errors was handed down May 17, 1957 (144 Connecticut 374, 132 A.2d 563) and the full text

of the opinion appears in Appendix C hereto, pp. 10a. In substance the Supreme Court of Errors ruled that the assessors had "acted contrary to the statutes and hence illegally * * *". The Court, however, expressly overruled its earlier decision granting a taxpayer relief under such circumstances (*Randell v. Bridgeport*, 1893, 63 Conn, 321, 28 A. 523), and denied the petitioner relief under Sec. 1800, saying:

> "We cannot * * * construe it as expressing a legislative intent to confer upon the Court the power to adjust inequalities in the assessed value of property, when those values have been reached by applying a percentage of less than 100% of the actual values of the property assessed, in direct violation of the mandate contained in Sections 1738 and 1047d. (General Statutes)." (Appendix C, p. 17a).

Following this decision, and during the same year, the petitioner, pursuant to the provisions of Section 1801 of the General Statutes (Revision of 1958, Section 12-119) (Appendix A, p. 2a), then instituted the present action in the Court of Common Pleas (R. 1-4). Similar actions of five other manufacturing corporations in Bristol are pending in the Court of Common Pleas and by stipulation of the parties those actions will abide by the final judgment entered in this case (R. 10).

Later in the same year, 1957, and during the pendency of this action, and of the five similar actions of the other corporations in Bristol, the legislature of the State of Connecticut passed Public Act No. 673 (Appendix A, *infra*, p. 3a), Section 1 of which purports to validate retroactively all assessments theretofore made, though of varying percentages of true and

actual value. The Act provides that: "* * * all procedures followed and all action taken with respect thereto by said assessors and boards of tax review are validated and shall be legal and binding as though such procedures followed and such action taken were in accordance with law; * * *". It further purports to apply to all appeals pending or to be brought under the aforementioned Sections 1800 and 1801 of the General Statutes of Connecticut, *supra*, which, in terms, of course, applied to the six pending suits under Sec. 1801, here involved.

Pursuant to Stipulation for Reservation of the parties hereto (R. 6-11) and approved by the Court of Common Pleas (R. 11), the questions raised in this action were reserved for consideration and advice of the Supreme Court of Errors of Connecticut. Five questions were so reserved for advice, the first being whether petitioner (plaintiff) was entitled to relief under Section 1801, and the other four relating to the constitutionality, under both the state and federal constitutions, of the aforementioned Public Act No. 673 of 1957. The opinion of the Supreme Court of Errors (R. 15, Appendix B, p. 4a) answered only the first question, denying relief to petitioner under Section 1801, and refrained from answering the remaining reserved questions with respect to the constitutionality of Public Act No. 673. Petitioner filed a timely motion for reargument which was denied on June 3, 1959 (Supplemental Record).

REASONS FOR GRANTING THE WRIT

1. The decision of the Supreme Court of Errors in the instant case (Appendix B, *infra*, p. 4a), while recognizing that the assessment of the petitioner's

property was unlawful and illegal under its earlier decision, 144 Connecticut 374, 132 A.2d 563 (Appendix C, *infra*, p. 10a), nevertheless denies any relief or remedy to the petitioner to recover back any part of the tax levied on such illegal and unlawful assessment. This result is reached by invoking a harsh and strained application of Section 1801 of the General Statutes of Connecticut (Appendix A, *infra*, p. 2a), and wholly disregarding the purpose and intent of such statute to afford the taxpayer relief upon principles of "justice and equity". It is a well recognized principle that a State Court, although vested with an almost absolute power to construe and apply its own statutes, must nevertheless refrain from placing a construction on any statute, the effect of which, would deprive entirely a person's remedy for the enforcement of a right. This would be a denial of due process under the Fourteenth Amendment. *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U.S. 673 (1930).

Petitioner's holdings are substantial and represent 3.633% of all taxable real and personal property in Bristol (R. 9). In making the assessment, later declared to be unlawful and illegal, the assessors determined upon a valuation equal to varying percentages of petitioner's property, assessing motor vehicles at 100%, all other personal property at 90% and real property at 50%. As thus assessed, petitioner's property was included in the tax list for the Town together with all other taxable property based on valuations reached by application of the same formula. In levying the tax thereon, the assessors applied the same mill rate to all property on the list. Although, as above stated, the true and actual value of petitioner's property, of all classifications, was only 3.633% of all tax-

able property in the Town, under this illegal method of assessment, the assessed value of petitioner's property was raised to 4.914%, of the total assessed value of all property in Bristol, after exemptions (R. 9). While the present record does not disclose the amount of the additional tax imposed by this method of assessment and this amount would have to be determined upon a hearing of the issue raised by the petitioner's complaint, it is patently clear that this illegal method of assessment required petitioner to bear a disproportionate share of the total tax assessed for the support of the Town of Bristol for that year. In other words, it is obvious that the method of assessment contrived by the assessors and the Board placed a larger and disproportionate burden of taxation on taxpayers owning substantial amounts of personal property than upon owners of real estate who were assessed at only 50% of actual value. Had all property been assessed at 100%, it, of course, follows that the tax burden on owners of personal property would be appreciably reduced. The scheme of personal property tax assessment thus devised hit directly at the six manufacturing corporations here involved.

2. This problem, even in the Town of Bristol, is not peculiar to the petitioner. The record shows that five other manufacturing corporations in Bristol have filed similar actions and by stipulation of the parties the decision in this case will control ultimate disposition of the same unlawful assessment against these taxpayers (R. 10). Moreover, the problem is of far greater moment than merely to the Town of Bristol or the State of Connecticut, as appears from the cases arising in many other states involving similar attempts to assess unfairly and disproportionately property for

taxation. See: In *State* v. *City of Evansville*, 261 Wisc. 599, 53 NW 2d 795; *Bemis Brothers Company* v. *City of Claremont*, 98 NH 446, 102 A.2d 512; *Sears Roebuck & Company* v. *City of Presque Isle*, 107 A.2d 475; *Hutchins et al* v. *Howard et al*, 211 Ga. 830; *Booneville National Bank* v. *Schlotzhauer, et al.*, 317 Mo. 1298, 298 SW 732, 55 A.L.R. 489; *Pierce* v. *Green*, 229 Iowa 22, 294 NW 237, 131 A.L.R. 335; and *Baldwin Construction Co.* v. *Essex County Board of Taxation*, 16 N.J. 329, 108 A.2d 598 (Opinion by Mr. Justice Brennan).

3. Petitioner first exhausted its administrative remedy by appealing to the Board of Review but relief was denied. Then, pursuant to provisions of Section 1800 of the General Statutes of Connecticut it appealed to the Court of Common Pleas. The questions raised were reserved for the consideration and advice of the Supreme Court of Errors in accordance with establishing Connecticut practice and that Court by its decision of May 17, 1957, 144 Connecticut 374, 132 A.2d 536 (full text appearing at p. 10a, Appendix C) struck down the assessment as unlawful and illegal but denied petitioner any relief therefrom on the ground that the statute, Section 1800, did not "confer upon the Court the power to adjust inequalities in the assessed values of property when those values have been reached by applying a percentage of less than 100% of the actual values of the propertly assessed". Following this decision petitioner attempted to obtain relief by a different course which led to the filing of the instant action. This is a civil action under the provisions of Section 1801 of the General Statutes, (the full text of which appears at p. 2a of Appendix A) the clear intendment of which is to afford taxpayers full redress on principles of "justice and

equity" from any and all inequities arising when property is wrongfully assessed. Nevertheless, the Court now has again denied petitioner any relief, holding that although the assessment was recognized as being illegal and unlawful under its earlier decision, *supra*, petitioner still has no remedy under Section 1801 to obtain either an adjustment of the assessed values of its property or to recover back any overpayment of taxes thereunder. The reasons now asserted by the Court were that Section 1801 applied only to assessments which were "manifestly excessive", by which the Court obviously meant only assessments in excess of 100% of actual and true value. This strained application of the state statute deprived petitioner, and all other taxpayers in the same situation, of any right of recovery of taxes computed on any method or formula, however disproportionate and unjust, if such assessment was below 100% of actual value. The decision accordingly leaves all taxpayers without any remedy or right to relief from any scheme or device of assessment which may be contrived and no matter how disproportinate in degree between the varying classes of property, if any of the assessments involved should be made for less than true and actual value. This denial of any remedy to recover taxes illegally assessed or overpaid clearly deprives the petitioner of substantial property rights without due process of law as guaranteed by the Fourteenth Amendment. *Brinkerhoff-Faris Trust and Savings Co.* v. *Hill, supra; Greene* v. *Louisville & Interurban R. Co.*, 244 U. S. 499, (1917); and *Ward* v. *Board of County Com'rs.*, 253 U. S. 17 (1920).

> "* * * while it is for the state courts to determine the adjective as well as the substantive law of the state, they must, in so doing, accord the parties

due process of law. Whether acting through its judiciary or through its Legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it." (*Brinkerhoff-Faris Trust and Savings Co.*, 281 U. S. at p. 682).

CONCLUSION

The denial of any remedy to a taxpayer to recover a illegally imposed tax, in the situation in this case, is a matter of public interest and concern far greater than the injustice to this particular litigant. The principles involved affect the tax structure of most of the states, municipalities and towns throughout this country. Due process of law in this aspect of the administration of *ad valorem* tax assessment laws should be a concern of this Court whose guidance will be of benefit in all existing problems in this field, as well as those which will undoubtedly arise in the future in the ever-increasing pressure for more and more tax revenues to meet expanding needs and rising costs of government.

While petitioner recognizes this Court has repeatedly stated that it would not consider the constitutionality of a state law unless that issue was expressly before and passed upon by the state court, nevertheless, the statute herein referred to which attempts to validate retroactively the illegal tax assessments in question and expressly bars any relief to the taxpayer affected thereby, Public Act No. 673 of 1957, *supra*, is such a flagrant abuse of any conception of due process of law, that it should not go unnoticed by this Court. In the event that certiorari is granted and this case is

ultimately remanded, petitioner will be confronted by the bar of this statute. In order to terminate this litigation and to do full and complete justice between the parties consideration should now be given to the serious constitutional question raised thereby.

For this and the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDIX A

General Statutes of Connecticut Revision of 1949:

Sec. 1800. Appeal from Board of Tax Review. Any person claiming to be aggrieved by the action of the board of tax review in any town or city may, within two months from the time of such action, make application in the nature of an appeal therefrom, to the court of common pleas of the county in which such town or city is situated, which shall be accompanied by a citation to such town or city to appear before said court. Such citation shall be signed by the same authority and such appeal shall be returnable at the same time and served and returned in the same manner as is required in case of a summons in a civil action. The authority issuing the citation shall take from the applicant a bond or recognizance to such town or city, with surety, to prosecute the application to effect and to comply with and conform to the orders and decrees of the court in the premises. Any such application shall be a preferred case, to be heard, unless good cause appear to the contrary, at the first session, by the court or by a committee appointed by the court, and the pendency of such application shall not suspend an action by such town or city to collect not more than seventy-five per cent of the tax so assessed and upon which such appeal is taken. The court shall have power to grant such relief as shall to justice and equity appertain, upon such terms and in such manner and form as appears equitable, and, if the application shall appear to have been made without probable cause, may tax double or triple costs, as the case appears to demand; and, upon all such application, costs may be taxed at the discretion of the court. If the assessment made by the board of tax review is reduced by said court, the applicant shall be reimbursed by the town or city for any overpayment of taxes. Upon motion, said court shall, in event of such overpayment, enter judgment in favor of such applicant and against such city or town for

the whole amount of such overpayment, together with interest and costs.

SEC. 1801. REMEDY WHEN PROPERTY WRONGFULLY ASSESSED. When it is claimed that a tax has been laid on property not taxable in the town or city in whose tax list such property was set, or that a tax laid on property was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property, the owner thereof, prior to the payment of such tax, may, in addition to the other remedies provided by law, make application for relief to the court of common pleas of the county in which such town or city is situated. Such application may be made within one year from the date as of which the property was last evaluated for purposes of taxation and shall be served and returned in the same manner as is required in the case of a summons in a civil action, and the pendency of such application shall not suspend action upon the tax against the applicant. In all such actions, the court of common pleas shall have power to grant such relief upon such terms and in such manner and form as to justice and equity appertain, and costs may be taxed at the discretion of the court. If such assessment shall be reduced by said court, the applicant shall be reimbursed by the town or city for any over payment of taxes in accordance with the judgment of said court.

PUBLIC ACTS OF THE STATE OF CONNECTICUT,
JANUARY SESSION, 1957

PUBLIC ACT NO. 673

AN ACT CONCERNING LOCAL PROPERTY TAX ASSESSMENTS.

Section 1. In all cases in which the assessors or boards of tax review of any municipality, as the term "municipality" is defined in section 1823 of the general statutes, have assessed any estate for purposes of the ad valorem property tax at a fraction of the then true and actual value of such estate; and in all cases in which the assessors or boards of tax review of any such municipality have assessed real property at a different percentage of its then true and actual value then the percentage of the then true and actual value at which they have assessed personal property, all procedures followed and all action taken with respect thereto by said assessors and boards of tax review are validated and shall be legal and binding as though such procedures followed and such action taken were in accordance with law; and the assessment lists containing any such property, assessed in such manner, and the votes imposing taxes thereon shall not for such causes be adjudged void or, defective, but the same are validated and made binding upon the municipality where the same were made; and all taxes which have been or shall be laid on the assessment list completed or to be completed prior to the effective date of this act and imposed according to such assessment list may be levied and collected. All rights of appeal as set forth in section 1800 and section 1801 of the general statutes shall apply to this act whether appeals are now pending or to be brought and the court shall multiply the then true and actual value as determined by said court of the property which is the subject of appeal by any percentage or fraction used by the municipality in determining whether or not relief should be granted in such appeal.

APPENDIX B

SUPREME COURT OF ERRORS

MARCH TERM, 1959

146 Connecticut 403

THE E. INGRAHAM COMPANY v. TOWN AND CITY OF BRISTOL

Application for relief against the wrongful assessment of taxes upon personal property, brought to the Court of Common Pleas in Hartford County and reserved by the court, *Barber, J.*, for the advice of this court.

Joseph M. Donovan and *Wallace Barnes*, with whom were *Sherwood L. Anderson III* and, on the brief, *Frederick W. Beach* and *George T. Calder*, for the plaintiff.

Neil F. Murphy, with whom, on the brief, was *Louis F. Hanrahan*, corporation counsel, for the defendant.

KING, J. In May, 1956, the plaintiff instituted this proceeding in four counts. It has agreed that all but the second and fourth counts may be treated as abandoned. The defendant demurred to the prayers for relief. Apparently before any determination of the demurrer, the parties entered into a stipulation for a reservation of certain questions. It is this reservation which is now before us. The basic facts are relatively simple. The plaintiff, a manufacturer, on October 1, 1955, owned real and personal property, all liable to taxation in Bristol. The real property was assessed at 50 per cent of its actual value, the personal property other than motor vehicles at 90 per cent, and the motor vehicles at 100 per cent. These percentages were applied uniformly in the assessment of all property in Bristol. Of course, the millage rate on all assessments was uniform for the tax year in question. There is no claim that the amount taken as the actual value of any of the plaintiff's property was excessive. Indeed, the amount

taken as the actual value of the personal property other than motor vehicles was the plaintiff's own valuation.

The plaintiff claims that all of its property, both real and personal, should have been assessed at a single uniform percentage of its actual value, that it owned more than twice as much personal property as real property, and that since all personal property in Bristol, including that of the plaintiff, was assessed at a higher percentage of its actual value than was real property, the plaintiff was indirectly required to pay a higher percentage of the total taxes raised in Bristol for the year in question than it would have had to pay had personal property not been assessed at a higher percentage of actual value than was real property.

The plaintiff instituted a similar proceeding based on the assessment of October 1, 1954. In a decision rendered May 17, 1957, this court held that under the then controlling statutes[1] assessors had to assess real and personal property at its actual value. *E. Ingraham Co.* v. *Bristol*, 144 Conn. 374, 377, 132 A.2d 563. It should be noted that in the present proceeding the plaintiff does not seek a legal assessment of its property, that is, an assessment at actual value. Nor did it in the former proceeding. Admittedly, all of the plaintiff's property, except its motor vehicles, was assessed in 1954 and in 1955 at less than actual value. In its brief it claims "reimbursement by the Town of Bristol for overpayment of taxes."

[1] To avoid confusion it perhaps should be pointed out that subsequent to that decision the General Assembly, at its 1957 session, enacted what is now § 12-64 of the Revision of 1958, changing the law to provide that all taxable real and personal property "shall be liable to taxation at a uniform percentage of its present true and actual valuation, not exceeding one hundred per cent of such valuation." It is not claimed that this litigation had any effect on the instant case, which involves an assessment made as of October 1, 1955.

While this court held the 1954 assessment, except as to motor vehicles, illegal, it further held that the plaintiff was entitled to no relief since as a result of the illegality all of the plaintiff's property except motor vehicles was assessed at less than it should have been under the controlling statutes and any reduction would violate the assessment statutes even more than the board of assessors had already done by assessing property at fractions of actual value. *E. Ingraham Co.* v. *Bristol*, supra, 382. The plaintiff seeks to avoid the result of that case by claiming that the present proceeding, unlike the former case, is not an appeal from the doings of the board of tax review under what is now § 12-118 of the 1958 Revision (Rev. 1949, § 1800), but is an application to the Court of Common Pleas for relief under § 12-119 (Rev. 1949, § 1801). The defendant claims the present proceeding is solely an appeal from the board of tax review under § 112-118 and that under the rule of *E. Ingraham Co.* v. *Bristol*, supra, no relief can be granted. In the view which we take it is unnecessary to determine this question and we assume, without in any way deciding, that the complaint is adequate to invoke the provisions of § 12-119.

The plaintiff's right to relief under § 12-119 must be determined from an analysis of the statute in the light of the plaintiff's claims and the stipulated facts. The statute is "directed to relief against the collection of an illegal tax. The proper judgment is not, as in the case of an appeal from action of a board of . . . [tax review under § 12-118], that the valuations in the grand list be changed . . . but that the tax sought to be collected is, in whole or in part, not justly due. The grand list remains unaffected but the tax, or some part of it, based on the list, cannot be collected." *State ex rel. Waterbury Corrugated Container Co.* v. *Kilduff*, 128 Conn. 647, 649, 25 A.2d 62; *Fenwick* v. *Old Saybrook*, 133 Conn. 22, 24, 47 A.2d 849; *First National Bank & Trust Co.* v. *West Haven*, 135 Conn. 191, 194 n., 62 A.2d 671. It is important, however, to note that the pre-

requisite to relief under the statute is an illegality in the assessment of the applicant's property, or at least of property which he owned at the date of the institution of the action. *General Realty Improvement Co.* v. *New Haven*, 133 Conn. 238, 241, 50 A.2d 59.

"The statute in question does not act in any way as . . . an appeal [from the board of tax review]. It provides another and different method of attacking the validity of an assessment upon two different grounds included in its provisions, and upon those only. We have held heretofore that the remedy by appeal from the action of a board of . . . [tax review under § 12-118 of the 1958 Revision] is not exclusive, and that the tax may be paid and an action brought to recover it as money illegally received and retained, and that in extreme cases an injunction may be granted restraining the collection of the tax. . . . To these recognized remedies the statute . . . [§ 12-119] merely added one more, and this added remedy was, properly speaking, merely declaratory of existing and equitable rights; for . . . relief outside of that obtainable by appeal [from the board of tax review] would have been afforded as respects the two categories mentioned in the . . . statute . . . ." *Connecticut Light & Power Co.* v. *Oxford*, 101 Conn. 383, 391, 126 A. 1. Whether, in all situations where it is applicable, the statute precludes resort to an equity action we need not now determine. *Cohn* v. *Hartford*, 130 Conn. 699, 704, 37 A.2d 237.

The first category in the statute embraces situations where a tax has been laid on property not taxable in the municipality where it is situated, as in cases such as *Fenwick* v. *Old Saybrook*, supra; *First National Bank & Trust Co.* v. *West Haven*, supra, 192; and *Bridgeport* v. *Stratford*, 142 Conn. 634, 636, 116 A.2d 508. Here it usually, if not invariably, furnishes a remedy alternative to an appeal from the board of tax review under § 12-118. See cases such as *Pomfret School* v. *Pomfret*, 105 Conn. 456,

457, 136 A. 88; and *Arnold College* v. *Milford*, 144 Conn. 206, 207, 128 A.2d 537. With this category we have no immediate concern in this case.

The second category, under which the plaintiff claims to be proceeding, embraces situations where it is claimed that, in the words of the statute, "a tax laid on property was computed on an assessment which, under all the circumstances, was manifestly excessive and could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property." Here the statute does not afford a procedure in all respects alternative to that given by an appeal from the board of tax review under § 12-118. Mere over-valuation, without more, in an assessment of property is not enough to make out a case under § 12-119, and for this the exclusive remedy is still an appeal from the board of tax review under § 12-118. *Cohn* v. *Hartford*, supra, 703; *Cooley Chevrolet Co.* v. *West Haven*, 146 Conn. 165, 166, 148 A.2d 327. To bring an assessment under the second category of § 12-119, it must be (a) manifestly excessive and (b) one which could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of the property. *Lomas & Nettleton Co.* v. *Waterbury*, 122 Conn. 228, 230, 188 A. 433; *Cohn* v. *Hartford*, supra; *Mead* v. *Greenwich*, 131 Conn. 273, 276, 38 A.2d 795. Parenthetically, it may be noted that after the decision in *E. Ingraham Co.* v. *Bristol*, 144 Conn. 374, 132 A.2d 563, the General Assembly, in § 1 of No. 673 of the 1957 Public Acts, purported to validate assessments in municipalities where real or personal property had been assessed at a percentage of its actual value instead of at its full actual value. The plaintiff claims that the section is unconstitutional as an invalid attempt to validate an illegal assessment retroactively. Under our view of this case, it is unnecessary to consider, and we do not give consideration to, this validating statute.

There can be no doubt that the plaintiff has brought itself within the second of the two prerequisites for relief under the second category of § 12-119 in that the assessment of its real and personal property, except for its motor vehicles, was illegal and could have been, and indeed was, arrived at only by disregarding the provisions of the law requiring that its property be assessed at its actual value as distinguished from any fraction of that value. *E. Ingraham Co.* v. *Bristol*, supra, 377. But it is equally obvious that the plaintiff has failed to bring itself within the first prerequisite. By showing that an illegal assessment threw a disproportionate share of the total tax liability in Bristol upon it, the plaintiff did not establish that the assessment on its personal property was "manifestly excessive." On the contrary, the assessment was obviously too low in that it was admittedly fixed at only a fractional part of the actual value. It follows that the plaintiff has failed to show itself entitled to relief under § 12-119, under which, alone, it claims to be proceeding, and that the answer to the first question in this reservation—whether the plaintiff is entitled to relief under § 12-119—should be in the negative. This conclusion disposes of this application adversely to the plaintiff and makes unnecessary any consideration of the other questions asked in the reservation.

To the first question in the reservation as amended, we answer "No"; the remaining questions are not answered.

No costs will be taxed in this court to either party.

In this opinion the other judges concurred.

APPENDIX C

THE E. INGRAHAM COMPANY v. TOWN AND CITY OF BRISTOL
144 Conn. 374

Argued April 16—decided May 17, 1957

Application in the nature of an appeal from the action of the board of tax review of the town and city of Bristol in refusing to reduce the valuation of personal property owned by the plaintiff, brought to the Court of Common Pleas in Hartford County and reserved by the court, *Healey, J.*, for the advice of this court.

The plaintiff filed a motion for reargument which was denied.

Frederick W. Beach and *Wallace Barnes*, with whom, on the brief, were *Joseph M. Donovan*, *George T. Calder* and *Walter F. Torrance, Jr.*, for the plaintiff.

Neil E. Murphy, with whom were *Harry F. Pergoda* and, on the brief, *Louis F. Hanrahan*, corporation counsel, for the defendant.

O'SULLIVAN, C. J. The stipulated facts essential to this reservation are these: On October 1, 1954, the plaintiff, a manufacturing concern was the owner of real estate and personalty located in the town of Bristol. The personalty consisted of machinery, raw materials, goods in process, finished products and motor vehicles. The assessors determined that the actual value of the plaintiff's real and personal property on October 1, 1954, was $2,496,460 and $6,149,672, respectively. The assessors further determined that all of the taxable real estate in Bristol had, as of the same date, an actual value of $145,650,350, and the personalty an actual value of $48,382,958, or a total of $194,033,278. The assessors then set in the tax list of that year the plaintiff's real estate at $1,248,230; its personalty other than motor vehicles at $5,501,770; and

its motor vehicles at $6600; the three amounts being 50 per cent, 90 per cent and 100 per cent, respectively of the actual values previously determined. These listings made a total assessment against the plaintiff of $6,756,600.

Using comparable methods and percentages, the assessors set in the tax list all of the taxable realty within the town at $72,825,160; all of the taxable personalty other than motor vehicles at $33,755,930; and all of the motor vehicles at $10,876,370. After legal exemptions of $3,951,220 had been applied to these three classifications and after minor adjustments had been made on the application of property owners not parties to this action, the grand list totaled $113,314,360.

The sum of $8,616,132, the actual value of all of the plaintiff's property as determined by the assessors, was 4.447 per cent of the actual value of all the taxable property in the town. The sum of $6,756,600, the assessed value of all the plaintiff's property, was 5.962 per cent of the grand list of the town.

Within the time prescribed by law, the plaintiff appealed to the board of tax review for a reduction in the assessment of its personalty, but the appeal was dismissed. Thereupon the plaintiff instituted this proceeding, which has been briefed and argued as an application in the nature of an appeal to the Court of Common Pleas under General Statutes § 1800, and we so construe it. The parties having stipulated in the Court of Common Pleas as to the foregoing facts, the case has been reserved for advice upon the four questions.[1] Essentially, these questions pre-

[1] "1. Did the Assessors and the Board of Tax Review of the town of Bristol err in determining that all the Plaintiff's real and personal property should be assessed and set in the Grand List of October 1, 1954, at 5.962% of the assessed value of all taxable property in the town when the true and actual value of said property as determined by them was only 4.447% of the true and

sent the single issue whether or not the assessors can, by using a higher percentage of the actual value of personalty than they do of real estate in making assessments, impose upon the plaintiff the obligation of paying a greater proportionate amount of taxes than those assessed, let us say, for only real estate.

The assessing of property at a fraction of its actual value undoubtedly is so widespread that most, if not all of the municipalities in the state pursue the practice. This rule of assessment has been tolerated for so long a time that it has acquired the respectability of assumed legality. The practice, however, is clearly improper. Section 1738 of the General Statutes provides that taxable realty "shall be liable to taxation at its present true and actual valuation," and § 1047d of the 1955 Cumulative Supplement provides that all items of taxable personalty shall be set in the list of the owner "at their then actual valuation." Since a municipality has no authority to tax except as

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actual value of all taxable property in the town as determined by them?

"2. Did the Assessors and the Board of Tax Review of the town of Bristol err in setting the Plaintiff's personal property, other than its motor vehicles, [in] said Grand List at 90% of its true and actual value as determined by them and by setting its motor vehicles [in the] Grand List at 100% of their true and actual value as determined by them, when all of the taxable real property located in the town was set [in] said list at only 50% of its true and actual value as determined by them?

"3. Did the Defendant Board err in refusing to reduce the assessment of all Plaintiff's personal property at 50% of its true and actual value?

"4. Did the [defendant] Board err in refusing to correct the assessment of all Plaintiff's real and personal property [in] said list so that it would be 4.447% of the assessed value of all the taxable real and personal property in the town, when the true and actual value of all Plaintiff's real and personal property was only 4.447% of the true and actual value of all the taxable real and personal property located in the town?"

granted by the General Assembly, statute conferring authority to tax must be strictly observed. *Thames Mfg. Co. v. Lathrop*, 7 Conn. 550, 556. The unambiguous language of the two statutes just mentioned gives assessors no warrant to utilize as a tax base any value other than the actual value of the property. Indeed, the language impliedly forbids the adoption of any different base.

The impropriety of fractional valuation is manifest from the history of §§ 1738 and 1047d. Prior to 1860, the General Assembly specifically authorized assessments of real estate and personalty at percentages of their valuation. For example, in 1821 the statute provided that "[d]wellinghouses, with the buildings and lots appurtenant thereunto . . . shall be valued at the rate which each separate dwellinghouse and lot, with the appurtenances thereof, are worth in money, and . . . shall be set in the list of the owner, at two per cent of such value. Lands and separate lots . . . shall be valued and assessed by the acre . . . and shall be set in the list, at three per cent of such value. . . . All horses, asses and mules, one year old, or more, shall be valued and set in the list at ten per cent of such value. . . . Neat cattle one year old, or more, shall be valued, and set in the list, at six per cent of such value. Silver plate, except spoons, . . . shall be valued, and set in the list, at twenty-five per cent of such value. Clocks, watches and time-pieces shall be valued, and set in the list, at fifty per cent of such value." Statutes, 1821, p. 446, § 2. This legislative policy of requiring the assessment of property at fractional valuation remained in effect for forty years more, although the percentages were changed from time to time and eventually were stabilized at 3 per cent for both personalty and realty.[2]

In 1860, the General Assembly passed an act reciting "[t]hat all property on which, by the laws of this state,

[2] For comparable succeeding statutes see Statutes, 1824, p. 402, § 2; Statutes, 1838, p. 597, § 2; Statutes, 1849, p. 604, § 14 et seq.; Statutes, 1854, p. 839, §§ 7, 8.

taxes may be laid, shall be set in the list at its actual valuation, and not as heretofore at three per cent. of such valuation." Public Acts 1860, c. 15, § 1. The assembly thus abandoned, in the clearest sort of manner, the previous method of fractional valuation and directed the rule of assessment to be the actual value of the taxable property. This important change in legislative policy was continued and is to be noted in the Revisions of 1866 and 1875. Rev. 1866, p. 708 § 7, p. 709 § 8; Rev. 1875, p. 155 § 13; p. 156 § 14. The direction found in the two sections of the latter citation is to set real estate at its "true and actual valuation" and personalty at its "actual valuation." It should be stated, parenthetically, that the expressions "true and actual valuation" and "actual valuation" mean the same thing, and they are also synonymous with "market value," "market price" and "fair value." *Sibley* v. *Middlefield*, 143 Conn. 100, 106, 120 A.2d 77. The sections in the Revision of 1875 were continued in almost identical form, and appear in the 1949 Revision as §§ 1738 and 1745.[3] The latter section was amended in 1953 (Cum. Sup. 1953, § 848c) in a particular not material to this case and is now § 1047d. Thus, the history of the statutes discloses the unequivocal legislative intent, as expressed in the public act of 1860 and followed ever since, that all taxable property "shall be set in the list at its

[3] The language of the 1875 Revision appeared in the Revision of 1888, §§ 3827-3829, and in the Revision of 1902, §§ 2322-2324, except for the addition of barges and registered vessels to the list of taxable personal property. The language underwent very minor changes in the Revision of 1918, §§ 1183-1185, and in the Revision of 1930, §§ 1143, 1147, 1150, with the exception that § 1134 of the 1918 Revision was added at the end of § 1143 of the 1930 Revision and the provisions of chapters 162 and 204 of the Public Acts of 1923 were added to § 1147 of the 1930 Revision. Sections 1143 and 1147 of the 1930 Revision appear unchanged in the Revision of 1949, §§ 1738, 1745, except for a minor change in the order of words in § 1738 created by § 364c of the 1935 Cumulative Supplement.

actual valuation, and not as heretofore at [a] per cent. of such valuation."

Nor can we overlook a further matter in demonstrating the impropriety of pursuing the rule of fractional valuation. When assessors adopt such a rule, they indirectly assume a role which rightfully is not theirs to play. For, if such a rule is applied, the grand list will obviously be smaller in amount than it would be if the mandate of the statute were carried out. Under such circumstances, the borrowing power of the municipality is affected, since its indebtedness may not exceed specified percentages of the grand list. Cum. Sup. 1955, § 363d, as amended, Nov. 1955 Sup., §§ X8, X119. Assessors who use fractional valuation to determine their assessments therefore interfere, perhaps unwittingly but nonetheless effectively, with a power which legally belongs to others.

It is apparent, then, that the Bristol assessors acted contrary to the statutes, and hence illegally, in listing the plaintiff's real estate at 50 per cent of its actual value and the personalty, other than motor vehicles, at 90 per cent of that value. *Slosberg* v. *Norwich*, 115 Conn. 578, 162 A. 772; *Dennis' Appeal*, 72 Conn. 369, 372, 44 A. 545; *Ives* v. *Goshen*, 63 Conn. 79, 82, 26 A. 845; *White* v. *Portland*, 63 Conn. 18, 22, 26 A. 342. It does not, however necessarily follow that the plaintiff is entitled to relief.

Section 1800 of the General Statutes provides for such an appeal as was taken in the case at bar to the Court of Common Pleas from the action of the board of tax review in denying the plaintiff the relief it sought from the doings of the Bristol assessors.[4] The court is em-

[4] "Sec. 1800. APPEAL FROM BOARD OF TAX REVIEW. Any person claiming to be aggrieved by the action of the board of tax review in any town or city may . . . make application, in the nature of an appeal therefrom, to the court of common pleas . . . . The court shall have power to grant such relief as shall to justice and equity appertain, upon such terms and in such manner and form as shall appear equitable . . . ."

powered by statute "to grant such relief as shall to justice and equity appertain." Some sixty odd years ago this court handed down an opinion in *Randell* v. *Bridgeport*, 63 Conn. 321, 28 A. 523. A summary of the facts in that case is this: It was the uniform rule of the Bridgeport board of assessors to assess taxable property at half its actual value. This was contrary to the statutes, which required assessments to be made at actual value. Rev. 1888, §§ 3827, 3831. In 1891, the board assessed the plaintiff's real estate at a figure in excess of such half. Failing to obtain relief from the board of relief, the plaintiffs appealed to the court. The statute then in effect provided, like the applicable present statute, that the "court shall have power to grant such relief as shall to justice and equity appertain." Rev. 1888, § 3863. We said (p. 323): "There are two ways in which a taxpayer may be wronged in levying taxes. An assessment may conform to the statute generally and the individual may be assessed in excess of the statutory requirement. A wrong of that description is easily redressed. But when the town disregards the statute and establishes a rule of its own assessing the property at one half of its actual value, and then assesses an individual at the full value of the property, while the injury is the same the application of the remedy becomes more complicated. Practically the only way to redress the wrong is to reduce the assessment; and that makes the court seem to disregard the statute; while if the wrong is not redressed there is a denial of justice; and the court practically ignores the statute giving an aggrieved party an appeal, and practically ignores the statute which provides that 'said court shall have power to grant such relief as shall to justice and equity appertain.' . . . Thus we are in a dilemma. If we choose one horn of it a public statute is violated—not so much by the court as by the town—but by an apparent aproval of the court as to one individual; and that by an express command of another statute, and by the dictates of justice. If we take the other horn the court itself violates a remedial,

statute, and becomes in a measure a party to the wrong doing. Under the circumstances we do not hesitate to choose the former, and to redress the wrong." In other words we held that, although a judicial reduction of an assessment of property below its actual value was accomplishing what the statute forbade, the reduction was legally warranted under the language "[the] court shall have power to grant such relief as shall to justice and equity appertain."

The language quoted from § 1800 appears to give to the court broad equitable powers to adjust inequalities in the assessment of property for purposes of taxation. We cannot, however, construe it as expressing a legislative intent to confer upon the court the power to adjust inequalities in the assessed values of property when those values have been reached by applying a percentage of less than 100 per cent of the actual values of the property assessed, in direct violation of the mandate contained in §§ 1738 and 1047d. To make such an adjustment would necessarily result in the court's fixing a value below that prescribed by the statutes. Notwithstanding our recognition in the *Randell* case, supra, that the statutes required the assessors to place property in the tax list at 100 per cent of its actual value, we granted the plaintiffs in that case relief by fixing a valuation at less than 100 per cent of such value. The view which we take in the instant case is contrary to this, and the *Randell* case must therefore be overruled.

We are unable to give categorical answers to the questions propounded. We can answer only generally by stating that the assessors acted contrary to law in assessing the plaintiff's property, save the motor vehicles, and that the board of tax review did not act illegally in refusing the plaintiff's request for reduction of the assessments of its personalty.

No costs will be taxed in this court to either party.

In this opinion the other judges concurred.

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JAMES R. BROWNING, Cl

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 446

THE E. INGRAHAM COMPANY, *Petitioner*

vs.

BOARD OF TAX REVIEW OF THE TOWN AND CITY OF BRISTOL, *Respondent*

On Petition for a Writ of Certiorari to the Supreme Court of Errors of the State of Connecticut

BRIEF OF RESPONDENT IN OPPOSITION

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ACE PRINTERY INC — HARTFORD

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OPINION BELOW

The opinion of the Supreme Court of Errors of the State of Connecticut is reported in 146 Connecticut 403, 151 A. 2d 700, and is reprinted in Appendix to Petitioner's brief, page 4a.

JURISDICTION

The asserted grounds for jurisdiction are set forth in the petition.

QUESTION PRESENTED

Should the Supreme Court review a state court decision decided against a petitioner who, having

elected to sue for tax relief on one of several statutory procedures under state law, was denied relief because it failed to establish facts bringing its case within the prerequisites of said statutes?

STATUTES INVOLVED

The statutory provisions involved are the General Statutes of Connecticut, Revision of 1949, Sections 1745 and 1801.

STATEMENT OF FACTS

The statement of the Petitioner contained in its petition beginning at page 3 sets forth the history and facts surrounding this litigation and will, therefore, not be repeated herein.

ARGUMENT

I

The Court below has correctly construed Section 1801 under which this case was tried and no federal question is presented.

The Petitioner elected to proceed in the instant case solely under Section 1801, Connecticut General Statutes, Revision of 1949, which provides a remedy "when property is wrongfully assessed" and is directed against the collection of an illegal tax. As the Court below points out, the Petitioner failed to establish one of two essential prerequisites and thereby lost its case.

Section 1801 is not a substitute for an appeal from the Board of Tax Review, but only provides a different method of attacking the validity of an assessment upon two specific grounds. The first involves a tax

laid on property not taxable in the municipality where it is situated. The second, under which the Petitioner is solely proceeding, relates to a tax computed on an assessment which under all the circumstances was (a) "manifestly excessive" and (b) "could not have been arrived at except by disregarding the provisions of the statutes for determining the valuation of such property." Petitioner's property was admittedly assessed at less than full value and, therefore, the assessment made could not be manifestly excessive. *Section 1745, General Statutes of Connecticut, Revision of 1949.*

This Court has repeatedly stated that it is for the state courts to determine the adjective as well as the substantive law of the state. The Supreme Court of Errors of Connecticut did not, therefore, deny due process when it ruled that the Petitioner had failed to establish a *prima facie* case for relief under Section 1801. The Petitioner claims also that it has exhausted all administrative and legal remedies under state law. This is not so. The Petitioner creates this illusion by citing into this case the constitutional questions and arguments it raised in an earlier case, *The E. Ingraham Company vs. Town and City of Bristol*, 144 Conn. 374 (1957), which it did not attempt to bring before this Court. Those issues cannot be reviewed at this time in this new and substantially different litigation. It may be that Petitioner should have asked for a writ of certiorari in its earlier case but the fact is that it did not do so. It might be added that the earlier case was brought under Section 1800, Connecticut General Statutes, Revision of 1949, which provides a remedy when a taxpayer is aggrieved by the assessment placed upon his taxable property and seeks modification

thereof. In such action, the broad constitutional questions could have been reserved for argument in this Court. Respondent submits that the determination of those broad constitutional questions was not an issue in this case and it appears that the Petitioner selected a remedial tool not designed to perform the work it desired to have done.

It is the Respondent's position that not every grievance of a taxpayer can or must be adjusted under the procedure established in Section 1801. As a result, no federal question is created simply because a petitioner elected to proceed under Section 1801 and lost when it failed to meet its requirements. Due process for the redress of grievances was provided but not used. It is not possible to raise at this time, and in this case, constitutional arguments which would have been proper in a different proceeding in which they could have been presented, briefed, argued and, if need be, presented for consideration before this Court.

II

In this appeal no federal question exists concerning Public Act No. 673 of the General Assembly of the State of Connecticut, 1947.

This Court has ruled, on numerous occasions, that it will not review the constitutionality of a state statute unless that issue was expressly brought before, *and passed upon*, by the state court. Public Act No. 673 was not invoked to uphold the decision in this case and was not and is not necessary to a determination of the issues raised in this case.

CONCLUSION

Borrowing the language of Rule 19 of the Revised Rules of the Supreme Court of the United States, there are in this case "no special or important reasons" to review the decision below on writ of certiorari. A case rises or falls on the strength or weakness of the issues pleaded and presented in it and in it alone. It is respectfully submitted that all other issues are collateral only and outside the scope of a correct determination.

For the foregoing reasons, Respondent submits that the case is not one wherein certiorari should be granted.

Respectfully submitted,

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